



## NUCLEAR REGULATORY COMMISSION

In the Matter of:

CERTAIN LICENSEES REQUESTING  
UNESCORTED ACCESS TO  
RADIOACTIVE MATERIAL

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EA-12-062

### ORDER IMPOSING TRUSTWORTHINESS AND RELIABILITY REQUIREMENTS FOR UNESCORTED ACCESS TO CERTAIN RADIOACTIVE MATERIAL (EFFECTIVE IMMEDIATELY)

[NRC-2012-0257]

I

The Licensee identified in Attachment 1<sup>1</sup> to this Order holds a license issued by an Agreement State, in accordance with the Atomic Energy Act (AEA) of 1954, as amended. The license authorizes it to perform services on devices containing certain radioactive material for customers licensed by the U.S. Nuclear Regulatory Commission (NRC) or an Agreement State to possess and use certain quantities of the radioactive materials listed in Attachment 2 to this Order. Commission regulations at 10 CFR 20.1801 or equivalent Agreement State regulations require Licensees to secure, from unauthorized removal or access, licensed materials that are stored in controlled or unrestricted areas. Commission regulations at 10 CFR 20.1802 or equivalent Agreement State regulations require Licensees to control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage.

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<sup>1</sup> Attachment 1 contains sensitive information and will not be released to the public.

## II

Subsequent to the terrorist events of September 11, 2001, the NRC issued immediately effective security Orders to NRC and Agreement State Licensees under the Commission's authority to protect the common defense and security of the nation. The Orders required certain manufacturing and distribution (M&D) Licensees to implement Additional Security Measures (ASMs) for the radioactive materials listed in Attachment 2 to this Order (the radionuclides of concern), to supplement the existing regulatory requirements. The ASMs included requirements for determining the trustworthiness and reliability of individuals that require unescorted access to the radionuclides of concern. Section 652 of the Energy Policy Act of 2005, which became law on August 8, 2005, amended Section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check for "any individual who is permitted unescorted access to radioactive materials or other property subject to regulation by the Commission that the Commission determines to be of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and background checks." Section 149 of the AEA also requires that "all fingerprints obtained by a Licensee or applicant...shall be submitted to the Attorney General of the United States through the Commission for identification and a criminal history records check." As a result, the trustworthiness and reliability requirements of the ASMs were updated and the M&D Licensees were issued additional Orders imposing the new fingerprinting requirements.

In late 2005, the NRC and the Agreement States began issuing Increased Controls (IC) Orders or other legally binding requirements to Licensees who are authorized to possess the radionuclides of concern. Paragraph IC 1.c of the IC requirements stated that "service providers shall be escorted unless determined to be trustworthy and reliable by an NRC-required background investigation as an employee of a Manufacturing and Distribution Licensee." Starting in December 2007, the NRC and the Agreement States began issuing additional Orders

or other legally binding requirements to the IC Licensees, imposing the new fingerprinting requirements. In the December 2007 Fingerprinting Order, Paragraph IC 1.c of the IC requirements was superseded by the requirement that “Service provider Licensee employees shall be escorted unless determined to be trustworthy and reliable by an NRC-required background investigation.” However, NRC did not require background investigations for non-M&D service provider Licensees. Consequently, only service representatives of certain M&D Licensees may be granted unescorted access to the radionuclides of concern at an IC Licensee facility, even though non-M&D service provider Licensees provide similar services and have the same degree of knowledge of the devices they service as M&D Licensees. To maintain appropriate access control to the radionuclides of concern, and to allow M&D Licensees and non-M&D service provider Licensees to have the same level of access at customers’ facilities, NRC is imposing trustworthiness and reliability requirements for unescorted access to radionuclides of concern, as set forth in this Order. These requirements apply to non-M&D service provider Licensees that request and have a need for unescorted access by their representatives to the radionuclides of concern at IC Licensee facilities. These trustworthiness and reliability requirements are equivalent to the requirements for M&D Licensees who perform services requiring unescorted access to the radionuclides of concern.

In order to provide assurance that non-M&D service provider Licensees are implementing prudent measures to achieve a consistent level of protection for service providers requiring unescorted access to the radionuclides of concern at IC Licensee facilities, the Licensee identified in Attachment 1 to this Order shall implement the requirements of this Order. In addition, pursuant to 10 CFR 2.202, because of potentially significant adverse impacts associated with a deliberate malevolent act by an individual with unescorted access to the radionuclides of concern, I find that the public health, safety, and interest require this Order to be effective immediately.

### III

Accordingly, pursuant to Sections 81, 149, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Parts 20, 30 and 33, IT IS HEREBY ORDERED, **EFFECTIVE IMMEDIATELY**, THAT THE LICENSEE IDENTIFIED IN ATTACHMENT 1 TO THIS ORDER COMPLY WITH THE REQUIREMENTS SET FORTH IN THIS ORDER.

- A.1. The Licensee shall establish and maintain a fingerprinting program that meets the requirements of Attachment 3 to this Order for individuals that require unescorted access to the radionuclides of concern. The Licensee shall complete implementation of the requirements of Attachment 3 to this Order **within one hundred eighty (180) days** of the date of this Order, or before providing written verification to another Licensee subject to the IC requirements, or attesting to or certifying the trustworthiness and reliability of a service provider for unescorted access to the radionuclides of concern at a customer's facility.
- A.2. **Within ninety (90) days** of the date of this Order, the Licensee shall designate a "Reviewing Official" for determining unescorted access to the radioactive materials as listed in Attachment 2 to this Order by other individuals. The designated Reviewing Official shall be determined to be trustworthy and reliable by the Licensee in accordance with the requirements described in Attachment 3 to this Order and **must be authorized to have** unescorted access to the radioactive materials listed in Attachment 2 to this Order as part of his or her job duties.
- A.3. Fingerprints for unescorted access need not be taken if a designated Reviewing Official is relieved from the fingerprinting requirement by 10 CFR 73.61, or has been favorably

adjudicated by a U.S. Government program involving fingerprinting and a FBI identification and criminal history records check<sup>2</sup> within the last five (5) years, or for any person who has an active Federal security clearance (provided in the latter two cases that they make available the appropriate documentation<sup>3</sup>). The Licensee may provide, for NRC review, written confirmation from the agency/employer which granted the Federal security clearance or reviewed the FBI identification and criminal history records results based upon a fingerprint identification check. The NRC will determine whether, based on the written confirmation, the designated Reviewing Official may have unescorted access to the radioactive materials listed in Attachment 2 to this Order, and therefore, be permitted to serve as the Licensee's Reviewing Official<sup>4</sup>.

- A.4. A designated Reviewing Official may not review the results from the FBI identification and criminal history records checks or make unescorted access determinations until the NRC has approved the individual as the Licensee's Reviewing Official.
- A.5. The NRC will determine whether this individual (or any subsequent Reviewing Official) may have unescorted access to the radionuclides of concern, and therefore, will be permitted to serve as the Licensee's Reviewing Official. The NRC-approved Reviewing Official shall be the recipient of the results of the FBI identification and criminal history

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<sup>2</sup> Examples of such programs include (1) National Agency Check, (2) Transportation Worker Identification Credentials in accordance with 49 CFR Part 1572, (3) Bureau of Alcohol Tobacco Firearms and Explosives background checks and clearances in accordance with 27 CFR Part 555, (4) Health and Human Services security risk assessments for possession and use of select agents and toxins in accordance with 42 CFR Part 73, and (5) Hazardous Material security threat assessment for hazardous material endorsement to commercial drivers license in accordance with 49 CFR Part 1572, Customs and Border Patrol's Free and Secure Trade (FAST) Program. The FAST program is a cooperative effort between the Bureau of Customs and Border Patrol and the governments of Canada and Mexico to coordinate processes for the clearance of commercial shipments at the U.S. - Canada and U.S. - Mexico borders. Participants in the FAST program, which requires successful completion of a background records check, may receive expedited entrance privileges at the northern and southern borders.

<sup>3</sup> This documentation must allow the NRC or NRC-approved Reviewing Official to verify that the individual has fulfilled the unescorted access requirements of Section 149 of the AEA by submitting to fingerprinting and a FBI identification and criminal history records check.

<sup>4</sup> The NRC's determination of this individual's unescorted access to the radionuclides of concern in accordance with the process described in Enclosure 4 to the transmittal letter of this Order is an administrative determination that is outside the scope of this Order.

records check of the other Licensee employees requiring unescorted access to the radioactive materials listed in Attachment 2 to this Order, and shall control such information as specified in the "Protection of Information" section of Attachment 3 to this Order.

- A.6. The NRC-approved Reviewing Official shall determine whether an individual may have unescorted access to radioactive materials that equal or exceed the quantities in Attachment 2 to this Order, in accordance with the requirements described in Attachment 3 to this Order.
- B. Prior to requesting fingerprints from a Licensee employee, a copy of this Order shall be provided to that person.
- C.1. The Licensee shall, in writing, **within twenty-five (25) days** of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in this Order, including Attachment 3 to this Order, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission or Agreement State regulation or its license. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.
- C.2. The Licensee shall complete implementation of the requirements of Attachment 3 to this Order **within one hundred eighty (180) days** of the date of this Order.
- C.3. The Licensee shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 3 to this Order. The report shall be made **within twenty-five (25) days** after full compliance has been achieved.

- C.4. If during the implementation period of this Order, the Licensee is unable, due to circumstances beyond its control, to meet the requirements of this Order by **[December 3, 2012]**, the Licensee shall request, in writing, that the Commission grant an extension of time to implement the requirements. The request shall provide the Licensee's justification for seeking additional time to comply with the requirements of this Order.
- C.5. Licensees shall notify the NRC's Headquarters Operations Office at 301-816-5100 within 24 hours if the results from a FBI identification and criminal history records check indicate that an individual is identified on the FBI's Terrorist Screening Data Base.

Licensee responses to C.1, C.2., C.3., and C.4. above shall be submitted in writing to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Licensee responses shall be marked as "Security-Related Information - Withhold Under 10 CFR 2.390."

The Director, Office of Federal and State Materials and Environmental Management Programs, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by the Licensee.

#### IV

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order **within twenty-five (25) days** of the date of this Order. In addition, the Licensee and any other person adversely affected by this Order may request a hearing of this Order **within twenty-five (25) days** of the date of the Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made, in writing, to the Director, Division of Materials Safety and State Agreements, Office of Federal and State Materials and

Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee relies and the reasons as to why the Order should not have been issued. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at [hearing.docket@nrc.gov](mailto:hearing.docket@nrc.gov), or by telephone at 301-415-1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public



Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in the NRC's "Guidance for Electronic Submission," which is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID

certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail to [MSHD.Resource@nrc.gov](mailto:MSHD.Resource@nrc.gov), or by a toll-free call to 1-866-672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at <http://ehd1.nrc.gov/ehd/>, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission

of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be **(final twenty-five (25) days)** from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall

be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

Dated this 16<sup>th</sup> day of October, 2012.

FOR THE NUCLEAR REGULATORY COMMISSION

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Mark A. Satorius, Director  
Office of Federal and State Materials  
and Environmental Management Programs

Attachments:

1. Applicable Materials Licensee
2. Table 1: Radionuclides of Concern
3. Requirements for Service Provider  
Licensees Providing Written Verification  
Attesting to or Certifying the Trustworthiness  
and Reliability of Service Providers for  
Unescorted Access to Certain Radioactive  
Material at Customer Facilities, including  
Requirements for Fingerprinting and  
Criminal History Checks

**Attachment 1: Applicable Materials Licensee Redacted****Attachment 2: Order Imposing Trustworthiness and Reliability Requirements for Unescorted Access to Certain Radioactive Material**

Table 1: Radionuclides of Concern

Radionuclide	Quantity of Concern <sup>1</sup> (TBq)	Quantity of Concern <sup>2</sup> (Ci )
Am-241	0.6	16
Am-241/Be	0.6	16
Cf-252	0.2	5.4
Cm-244	0.5	14
Co-60	0.3	8.1
Cs-137	1	27
Gd-153	10	270
Ir-192	0.8	22
Pm-147	400	11,000
Pu-238	0.6	16
Pu-239/Be	0.6	16
Ra-226 <sup>3</sup>	0.4	11
Se-75	2	54
Sr-90 (Y-90)	10	270
Tm-170	200	5,400
Yb-169	3	81
Combinations of radioactive materials listed above <sup>4</sup>	See Footnote Below <sup>5</sup>	

<sup>1</sup> The aggregate activity of multiple, collocated sources of the same radionuclide should be included when the total activity equals or exceeds the quantity of concern.

<sup>2</sup> The primary values used for compliance with this Order are TBq. The curie (Ci) values are rounded to two significant figures for informational purposes only.

<sup>3</sup> The Atomic Energy Act, as amended by the Energy Policy Act of 2005, authorizes NRC to regulate Ra-226 and NRC is in the process of amending its regulations for discrete sources of Ra-226.

<sup>4</sup> Radioactive materials are to be considered aggregated or collocated if breaching a common physical security barrier (e.g., a locked door at the entrance to a storage room) would allow access to the radioactive material or devices containing the radioactive material.

<sup>5</sup> If several radionuclides are aggregated, the sum of the ratios of the activity of each source,  $i$  of radionuclide,  $n$ ,  $A_{(i,n)}$ , to the quantity of concern for radionuclide  $n$ ,  $Q_{(n)}$ , listed for that radionuclide equals or exceeds one. [(aggregated source activity for radionuclide A) ÷ (quantity of concern for radionuclide A)] + [(aggregated source activity for radionuclide B) ÷ (quantity of concern for radionuclide B)] + etc.....  $\geq 1$

## **Guidance for Aggregation of Sources**

NRC supports the use of the International Atomic Energy Association's (IAEA) source categorization methodology as defined in IAEA Safety Standards Series No. RS-G-1.9, "Categorization of Radioactive Sources," (2005) (see [http://www-pub.iaea.org/MTCD/publications/PDF/Pub1227\\_web.pdf](http://www-pub.iaea.org/MTCD/publications/PDF/Pub1227_web.pdf)) and as endorsed by the agency's Code of Conduct for the Safety and Security of Radioactive Sources, January 2004 (see [http://www-pub.iaea.org/MTCD/publications/PDF/Code-2004\\_web.pdf](http://www-pub.iaea.org/MTCD/publications/PDF/Code-2004_web.pdf)). The Code defines a three-tiered source categorization scheme. Category 1 corresponds to the largest source strength (equal to or greater than 100 times the quantity of concern values listed in Table 1) and Category 3, the smallest (equal or exceeding one-tenth the quantity of concern values listed in Table 1). Additional security measures apply to sources that are equal to or greater than the quantity of concern values listed in Table 1, plus aggregations of smaller sources that are equal to or greater than the quantities in Table 1. Aggregation only applies to sources that are collocated.

Licensees who possess individual sources in total quantities that equal or exceed the Table 1 quantities are required to implement additional security measures. Where there are many small (less than the quantity of concern values) collocated sources whose total aggregate activity equals or exceeds the Table 1 values, licensees are to implement additional security measures.

Some source handling or storage activities may cover several buildings, or several locations within specific buildings. The question then becomes, "When are sources considered collocated for purposes of aggregation"? For purposes of the additional controls, sources are considered collocated if breaching a single barrier (e.g., a locked door at the entrance to a storage room) would allow access to the sources. Sources behind an outer barrier should be aggregated separately from those behind an inner barrier (e.g., a locked source safe inside the locked

storage room). However, if both barriers are simultaneously open, then all sources within these two barriers are considered to be collocated. This logic should be continued for other barriers within or behind the inner barrier.

The following example illustrates the point: A lockable room has sources stored in it. Inside the lockable room, there are two shielded safes with additional sources in them. Inventories are as follows:

The room has the following sources outside the safes: Cf-252, 0.12 TBq (3.2 Ci); Co-60, 0.18 TBq (4.9 Ci), and Pu-238, 0.3 TBq (8.1 Ci). Application of the unity rule yields:  $(0.12 \div 0.2) + (0.18 \div 0.3) + (0.3 \div 0.6) = 0.6 + 0.6 + 0.5 = 1.7$ . Therefore, the sources would require additional security measures.

Shielded safe #1 has a 1.9 TBq (51 Ci) Cs-137 source and a 0.8 TBq (22 Ci) Am-241 source. In this case, the sources would require additional security measures, regardless of location, because they each exceed the quantities in Table 1.

Shielded safe #2 has two Ir-192 sources, each having an activity of 0.3 TBq (8.1 Ci). In this case, the sources would not require additional security measures while locked in the safe. The combined activity does not exceed the threshold quantity 0.8 TBq (22 Ci).

Because certain barriers may cease to exist during source handling operations (e.g., a storage location may be unlocked during periods of active source usage), licensees should, to the extent practicable, consider two modes of source usage — “operations” (active source usage) and “shutdown” (source storage mode). Whichever mode results in the greatest inventory (considering barrier status) would require additional security measures for each location.

Use the following method to determine which sources of radioactive material require implementation of the Additional Security Measures:

- Include any single source equal to or greater than the quantity of concern in Table 1
  - Include multiple collocated sources of the same radionuclide when the combined quantity equals or exceeds the quantity of concern
  - For combinations of radionuclides, include multiple collocated sources of different radionuclides when the aggregate quantities satisfy the following unity rule:  
$$\left[ \frac{\text{amount of radionuclide A}}{\text{quantity of concern of radionuclide A}} \right] + \left[ \frac{\text{amount of radionuclide B}}{\text{quantity of concern of radionuclide B}} \right] + \text{etc.} \dots \geq 1$$



**Attachment 3: Requirements for Service Provider Licensees Providing Written Verification Attesting to or Certifying the Trustworthiness and Reliability of Service Providers for Unescorted Access to Certain Radioactive Material at Customer Facilities, including Requirements for Fingerprinting and Criminal History Records Checks**

**A. General Requirements**

Licensees subject to the provisions of this Order shall comply with the requirements of this attachment. The term “certain radioactive material” means the radionuclides in quantities equal to or greater than the quantities listed in Attachment 2 to this Order.

1. The Licensee shall provide the customer’s facility written verification attesting to or certifying the trustworthiness and reliability of an individual as a service provider only for employees the Licensee has approved in writing (see requirement A.3 below). The Licensee shall request unescorted access to certain radioactive material at customer licensee facilities only for approved service providers that require the unescorted access in order to perform a job duty.
2. The trustworthiness, reliability, and true identity of a service provider shall be determined based on a background investigation. The background investigation shall address at least the past three (3) years, and as a minimum, include fingerprinting and a Federal Bureau of Investigation (FBI) criminal history records check as required in Section B, verification of employment history, education, and personal references. If a service provider’s employment has been less than the required three (3) year period, educational references may be used in lieu of employment history.
3. The Licensee shall document the basis for concluding that there is reasonable assurance that a service provider requiring unescorted access to certain radioactive material at a customer facility is trustworthy and reliable, and does not constitute an unreasonable risk for unauthorized use of the radioactive material. The Licensee shall maintain a list of service providers approved for unescorted access to certain radioactive

material.

4. The Licensee shall retain documentation regarding the trustworthiness and reliability of approved service providers for (3) years after the individual no longer requires unescorted access to certain radioactive material associated with the Licensee's activities.
5. Each time the Licensee revises the list of approved service providers (see requirement 3 above), the Licensee shall retain the previous list for three (3) years after the revision.
6. The Licensee shall provide to a customer written certification for each service provider for whom unescorted access to certain radioactive material at the customer's facility is required and requested. The written certification shall be dated and signed by the Reviewing Official. A new written certification is not required if an individual service provider returns to the customer facility within three (3) years, provided the customer has retained the prior certification.

**B. Specific Requirements Pertaining to Fingerprinting and Criminal History Records Checks**

1. The Licensee shall fingerprint each service provider to be approved for unescorted access to certain radioactive materials following the procedures outlined in Enclosure 3 of the transmittal letter. The Licensee shall review and use the information received from the FBI identification and criminal history records check and ensure that the provisions contained in the subject Order and this attachment are satisfied.
2. The Licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the "Right to Correct and Complete Information" section of this attachment.

3. Fingerprints for unescorted access need not be taken if an employed individual (e.g., a Licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.61, or any person who has been favorably-decided by a U.S. Government program involving fingerprinting and an FBI identification and criminal history records check (e.g., National Agency Check, Transportation Worker Identification Credentials in accordance with 49 CFR Part 1572, Bureau of Alcohol Tobacco Firearms and Explosives background checks and clearances in accordance with 27 CFR Part 555, Health and Human Services security risk assessments for possession and use of select agents and toxins in accordance with 42 CFR Part 73, Hazardous Material security threat assessment for hazardous material endorsement to commercial drivers license in accordance with 49 CFR Part 1572, Customs and Border Patrol's Free and Secure Trade Program<sup>5</sup>) within the last five (5) years, or any person who has an active Federal Security Clearance (provided in the latter two cases that they make available the appropriate documentation<sup>6</sup>). Written confirmation from the Agency/employer which granted the Federal Security Clearance or reviewed the FBI criminal history records results based upon a fingerprint identification check must be provided. The Licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires unescorted access to certain radioactive material associated with the Licensee's activities.
4. All fingerprints obtained by the Licensee pursuant to this Order must be submitted to the Commission for transmission to the FBI.

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<sup>5</sup> The FAST program is a cooperative effort between the Bureau of Customs and Border Patrol and the governments of Canada and Mexico to coordinate processes for the clearance of commercial shipments at the U.S. - Canada and U.S. - Mexico borders. Participants in the FAST program, which requires successful completion of a background records check, may receive expedited entrance privileges at the northern and southern borders.

<sup>6</sup> This documentation must allow the Reviewing Official to verify that the individual has fulfilled the unescorted access requirements of Section 149 of the AEA by submitting to fingerprinting and an FBI identification and criminal history records check.

5. The Licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthiness and reliability requirements of Section A of this attachment, in making a determination whether to approve and certify the individual for unescorted access to certain radioactive materials.
6. The Licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access to certain radioactive materials.
7. The Licensee shall document the basis for its determination whether to approve the individual for unescorted access to certain radioactive materials.

### **C. Prohibitions**

A Licensee shall not base a final determination to not provide certification for unescorted access to certain radioactive material for an individual solely on the basis of information received from the FBI involving: an arrest more than one (1) year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

A Licensee shall not use information received from a criminal history check obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the Licensee use the information in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

### **D. Right to Correct and Complete Information**

Prior to any final adverse determination, the Licensee shall make available to the individual the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must

be maintained by the Licensee for a period of one (1) year from the date of the notification. If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537-9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an Official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The Licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of an FBI identification and criminal history records check after the record is made available for his/her review. The Licensee may make a final unescorted access to certain radioactive material determination based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on unescorted access to certain radioactive material, the Licensee shall provide the individual its documented basis for denial. Unescorted access to certain radioactive material shall not be granted to an individual during the review process.

#### **E. Protection of Information**

1. Each Licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The Licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining whether to verify the individual for unescorted access to certain radioactive material. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need-to-know.
3. The personal information obtained on an individual from a criminal history record check may be transferred to another Licensee if the Licensee holding the criminal history record check receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining Licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.
4. The Licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.
5. The Licensee shall retain all fingerprints and criminal history records from the FBI, or a copy if the individual's file has been transferred:
  - a. for three (3) years after the individual no longer requires unescorted access, or
  - b. for three (3) years after unescorted access to certain radioactive material was denied.

After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

## **Implementing Guidance for Service Provider Licensees that are not Manufacturers or Distributors**

### **A. Initial Actions**

1. The U.S. Nuclear Regulatory Commission (NRC) issued a Regulatory Issue Summary (RIS 2007-15) informing all NRC licensees that are non-manufacturer and distributor (non-M&D) service providers, and all Agreement State Radiation Control Program Directors and State Liaison Officers about the non-M&D Service Provider Order.
2. Each non-M&D service provider licensee should review the RIS and determine if a need exists for its service representatives to have unescorted access to radioactive material in quantities of concern at client facilities.
3. If the licensee determines that unescorted access is required the licensee must request, in writing, that NRC issue the Order.

### **B. NRC Issues Order in Response to the Licensee's Request**

1. After receiving the Order, the licensee selects a candidate Reviewing Official. As part of the selection, the licensee must perform a trustworthiness and reliability review per the requirements in Attachment 3 of the Order. NOTE: the Reviewing Official MUST BE an individual that requires unescorted access to radioactive material in quantities of concern as part of his/her job duties.
2. The licensee designates the Reviewing Official to NRC by submitting the individual's fingerprints and processing fee.
3. NRC processes the fingerprints through the Federal Bureau of Investigation, and reviews the results of the criminal history investigation. If the investigation does not find disqualifying information, NRC will authorize the designated individual to serve as the licensee's Reviewing Official.

4. The Reviewing Official performs the trustworthiness and reliability reviews for other licensee service representatives that require unescorted access to radioactive material in quantities of concern. The Reviewing Official must submit the fingerprints of the service representatives to NRC and receive the criminal history investigation results. The reviews must be performed per the requirements in Attachment 3 of the Order and Enclosure 4 of the transmittal letter. Based on the information and investigation results, the Reviewing Official determines if the service representative is trustworthy and reliable and that the service representative may be granted unescorted access to radioactive materials in quantities of concern.
5. The Reviewing Official prepares, on company letterhead, an attestation or certification that indicates the service representative (by name) has been determined to be trustworthy and reliable in accordance with the NRC security Order for non-M&D Service Providers. The Reviewing Official signs and dates this document.
6. Client licensees may accept the signed and dated document in lieu of conducting their own trustworthiness and reliability review of the named service representative.

#### C. NRC Actions during Future Inspections

1. During future inspections, both the service provider licensee and the client licensee will be audited to assure compliance with the Order requirements and the implementation process.



## Questions and Answers with Regards to Fingerprinting and FBI Criminal History Records Checks

1. **Information on how I would be required to respond to this notice when I receive it does not appear to be included with the implementing guidance? Will my response include sensitive information?**

The information on how to respond to the NRC Order requiring implementation of the fingerprinting requirements is contained in the Order itself. The NRC Orders are not considered sensitive information. Examples of previous Orders can be found by searching ADAMS or NRC's Web site.

Licensee responses to the Order are considered sensitive information and should be marked appropriately at the top of the page with **"Security Related Information - Withhold Under 10 CFR 2.390."**

2. **Does a National Agency Check (NAC) satisfy the provisions of the Order?**

If the NAC has been conducted within the past five (5) calendar years and the employee can provide documentation of favorable results to the NRC or licensee's Reviewing Official, as appropriate, then this would satisfy the provisions of the Order.

3. **Can the Human Resources department be designated as the licensee's Reviewing Official to review criminal history records? Do they have to be fingerprinted to be able to review and approve others?**

The requirements for fingerprinting and criminal history records should be incorporated

into the licensee's current program of reviewing and approving background information of its employees. The duties of a Reviewing Official can be delegated to the Human Resources department or any other appropriate department as long as the individual(s) involved in the determining of an employee's trustworthiness and reliability have been determined themselves to be trustworthy and reliable by the licensee, are permitted to have unescorted access to radioactive material in quantities of concern as part of their job duties, and have been approved by the NRC to be the licensee's Reviewing Official.

**4. What is a Reviewing Official? Who can be a Reviewing Official?**

A Reviewing Official is an NRC-approved individual that requires unescorted access to radioactive material in quantities of concern as part of his/her job duties, and who shall make the trustworthiness and reliability determinations of other Licensee employees to determine whether the individual may have, or continue to have, unescorted access.

**5. I was only provided a few fingerprint cards, where can I get more?**

You can request more fingerprint cards by writing to the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555, by calling (301) 492-3531, or by e-mail to [forms@nrc.gov](mailto:forms@nrc.gov).

**6. What information do I need to include on the card?**

Incomplete fingerprint cards will not be processed and will be returned to the licensee.

Licensees need to include the following information on each card:

- a. Last name, first name, middle name
- b. Signature of person being fingerprinted

- c. Residence of person being fingerprinted
- d. Date
- e. Signature of official taking the fingerprints
- f. Employer and address
- g. Reason for being fingerprinted
- h. Aliases
- i. Citizenship
- j. Social security number and any of the other corresponding numbers requested on the card if applicable
- k. Date of birth
- l. Place of birth
- m. Sex
- n. Race
- o. Height
- p. Weight
- q. Eye color
- r. Hair color

**7. I was able to get more fingerprint cards from my local law enforcement agency, can I use those instead?**

No, because of problems that have been experienced in the past with some of the cards.

**8. Who do I send my fingerprints to?**

A completed fingerprint card should be sent to:

Director, Division of Facilities and Security

U.S. NRC

Two White Flint North

11545 Rockville Pike

Rockville, MD 20852-2738

ATTN: Criminal History Program, Mail Stop TWB-05B32M

**9. Is there a fee associated with the NRC processing the fingerprints?**

The current fee to process each fingerprint card is a \$26.00 per card. Additional fees may be charged by the entity taking the fingerprints.

**10. What method of payment does the NRC accept?**

NRC's preferred method of payment is electronic payment through <http://www.pay.gov>.

Please refer to the instructions (in Enclosure 3) included with the transmittal letter of the Order for details on how to pay electronically. NRC also accepts checks, cashier checks or money orders made out to the U.S. Nuclear Regulatory Commission along with the submission of fingerprint cards. Fingerprint cards along with checks, cashier checks or money orders should be sent to:

Director, Division of Facilities and Security

U.S. NRC

Two White Flint North

11545 Rockville Pike

Rockville, MD 20852-2738

Attn: Criminal History Program, Mail Stop TWB-05B32M

**11. When are licensees required to submit fingerprints to the NRC?**

Licensees are required to fingerprint and review the criminal history results for all materials quantities of concern to the NRC within 90 days after the Order is issued.

**12. Will guidance be provided on how to determine trustworthiness and reliability based on FBI identification and criminal history records checks?**

Guidance is included with the Order documents; however, it will ultimately be the decision of the licensee's Reviewing Official to determine whether an individual should be granted unescorted access to the radioactive material, based on the results of the criminal records history check, and the other trustworthiness and reliability requirements of the Order.

**13. My fingerprints have been returned several times as unclassifiable, can I get an extension to submit my fingerprints?**

On a rare case that a licensee needs additional time to implement the fingerprinting requirements beyond the implementation time, the NRC will consider granting extensions only on a case by case basis. Licensees must take the appropriate actions to minimize any potential impacts in delays from receiving the criminal history results from the NRC. In a rare case that an extension is needed, the request must be date-stamped before the deadline to implement the requirements and must include the licensee's justification as to why additional time is needed beyond the implementation period and the appropriate compensatory actions that will be implemented until the fingerprints are processed.

**14. What does unescorted access to the material mean?**

Unescorted access to the material means that an individual can exert some physical control over the material or device while they are alone.

**15. If I decide that based on a Federal criminal records history check one of my employees previously granted unescorted access should not have unescorted access to radioactive material what actions can I take?**

The licensee is ultimately responsible to determine the best course of action.

**16. Does the denial of unescorted access create legal liability for the licensee?**

The NRC acknowledges that employer liability potentially exists through the process for determining trustworthiness and reliability, just as employer liability potentially exists throughout the hiring process. A finding that results in denying someone employment may be actionable on the part of the employee/employee candidate, and this is no different.

**17. How far back do the criminal history record checks go? Can the NRC provide guidance on what types of information could be considered when granting unescorted access?**

The criminal history records check provides information on all arrests since the individual's eighteenth birthday. Guidance on criminal offenses that could be

considered is included in Enclosure 4 of the transmittal letter. However, the list of offenses is not inclusive. There may be additional offenses not listed in the guidance that the licensee wants to consider as part of unescorted access approval process. It is the licensee's ultimate business decision as to what criteria it uses for the bases of the trustworthiness and reliability determination.

**18. Is there a process to request an exemption from fingerprinting? Do employees that have been fingerprinted in the past need to be fingerprinted again?**

Fingerprints for unescorted access need not be taken if an employed individual (e.g., a Licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.61, or any person who has been favorably-decided by a U.S. Government program involving fingerprinting and an FBI identification and criminal history records check (e.g., National Agency Check, Transportation Worker Identification Credentials in accordance with 49 CFR Part 1572, Bureau of Alcohol Tobacco Firearms and Explosives background checks and clearances in accordance with 27 CFR Part 555, Health and Human Services security risk assessments for possession and use of select agents and toxins in accordance with 42 CFR Part 73, Hazardous Material security threat assessment for hazardous material endorsement to commercial drivers license in accordance with 49 CFR Part 1572, Customs and Border Patrol's Free and Secure Trade Program<sup>7</sup>) within the last five (5) years, or any person who has an active Federal Security Clearance (provided in the latter two cases that they make available the appropriate documentation).

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<sup>7</sup> The FAST program is a cooperative effort between the Bureau of Customs and Border Patrol and the governments of Canada and Mexico to coordinate processes for the clearance of commercial shipments at the U.S. - Canada and U.S. - Mexico borders. Participants in the FAST program, which requires successful completion of a background records check, may receive expedited entrance privileges at the northern and southern borders.

Written confirmation from the Agency/employer which granted the Federal security clearance or reviewed the FBI criminal history records results based upon a fingerprint identification check must be provided. The Licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires unescorted access to certain radioactive material associated with the Licensee's activities.

**19. Is fingerprinting meant to replace the trustworthiness and reliability determination?**

No, fingerprinting is only one component of the trustworthiness and reliability determination. A trustworthiness and reliability determination should be based, at a minimum, by verifying employment history, education, personal references and a federal criminal history check. All four of these components need to be considered when making a trustworthiness and reliability determination.

**20. How will compliance with the fingerprinting component be verified?**

Compliance will be verified at the time the licensee's trustworthiness and reliability program is inspected by the NRC.

**21. Is there financial aid or funding available to assist in the implementation of the fingerprinting requirements? Will the licensees be compensated in any way?**

The NRC will not provide financial aid and there is no funding available to assist in the



implementation of the fingerprinting requirements.

**22. Will there be a reevaluation period?**

At the moment there is no reevaluation period. The reevaluation of criminal history records will be addressed during the NRC's rulemaking process.

**23. The Order requires that the licensee shall provide under oath or affirmation a certification that the Reviewing Official is deemed trustworthy and reliable.**

**What does it mean to submit documents to the NRC "under oath or affirmation"?**

The requirement to submit documents to the NRC under oath or affirmation may be satisfied by using a notary public to authenticate oaths or affirmations and to certify that the information provided is correct and true. An alternate method for complying with the oath or affirmation requirement is presented in the United States Code, Title 28, Section 1746 (28 USC 1746). This method allows use of the following unsworn declaration to satisfy the oath or affirmation requirement:

I declare [or certify, verify, state] under penalty of perjury that the foregoing is true and correct.

Executed on [date] [Signature]

When applying this declaration, it must be used verbatim. Licensing documents accompanied by this unsworn declaration satisfy the requirement that such documents be submitted under oath or affirmation.

- 24. Can additional employees (e.g., new hires or existing employees changing positions within the company who did NOT have unescorted access prior to the date of the Order) be granted unescorted access to radioactive materials quantities of concern prior to the establishment of a fingerprinting program and certification that the Reviewing Official is deemed trustworthy and reliable?**

No. Prior to being granted unescorted access to material, all additional employees the licensee identifies after the date of the Order as requiring unescorted access, must be determined to be trustworthy and reliable based upon the requirements of the Order and the review of their FBI identification and criminal history records. The Order also requires that within 180 days of the date of the Order that licensees establish a fingerprinting program and within 90 days of the date of the Order provide under oath or affirmation a certification that the Reviewing Official is deemed trustworthy and reliable by the licensee.

Only after the Reviewing Official has been certified to be trustworthy and reliable by the licensee and approved by the NRC, can the Reviewing Official make trustworthiness and reliability determinations for any employee who requires unescorted access after the date of the Order. For administrative purposes, each submittal of fingerprints to the NRC should be accompanied by the name and address of the Reviewing Official to whom the criminal history records should be returned.

- 25. Who can perform the task of fingerprinting for my employees?**

Licensees must have their fingerprints taken by an authorized official, such as a representative from a local law enforcement agency. However, an authorized official,

for the purposes of taking fingerprints, could be available through private entities, contractors, or an established on-site fingerprinting program. If a licensee has fingerprints taken at a facility other than that of a recognized Federal, State, or local law enforcement agency, the licensee should ensure that the prints are taken legibly and match the identity of the individual named on the fingerprint card.

In these cases, the individual taking fingerprints should at a minimum:

- 1) Be trained to take fingerprints (*Training to take fingerprints is offered through the FBI, or may be available from local law enforcement agencies and some professional associations.*);
- 2) Verify the identity of the individual being fingerprinted by checking a government-issued picture identification (*e.g., a passport or driver's license*) and that the name on the card matches the government issued identification.
- 3) Sign the block on the fingerprint card labeled "SIGNATURE OF OFFICIAL TAKING THE FINGERPRINTS."

The licensee must ensure that complete and accurate information is provided in accordance with 10 CFR 30.9. available at:

<http://www.nrc.gov/reading-rm/doc-collections/cfr/part030/part030-0009.html>

- 26. How is the initial trustworthiness and reliability (T&R) determination and certification made (based on fingerprints and a criminal history record check) if**

**the individual to be designated as the Reviewing Official is also the license custodian, initiator, or applicant, and has unescorted access?**

In most cases, there will be no one within an organization or company, above the custodian or initiator of a license ("licensee"), previously determined trustworthy and reliable for purposes of evaluating background check and criminal history information and making the initial determination as to whether a designated Reviewing Official is trustworthy and reliable.

Within the licensing process, there are a series of screening criteria used by the reviewer to assess information regarding the applicant. The purpose of the screening criteria is to provide reasonable assurance that radioactive material will be used as intended. The fact that a regulatory authority, using established processes, has authorized the individual applicant to provide services to devices containing radioactive material quantities of concern provides the basis for allowing the applicant to appoint Reviewing Officials.

Where the licensee or applicant requires unescorted access and intends to designate himself or herself as the Reviewing Official, the licensee or applicant should submit fingerprints to the NRC for approval. Once approved by the NRC, the licensee or applicant can then make T&R determinations for other employees who require unescorted access subject to the fingerprinting requirements.

- 27. When completing the fingerprint cards, NRC Licensees should use their NRC docket number in the field "YOUR NO. OCA." Since Agreement State Licensees do not have NRC docket numbers, what should they use to complete the field?**

Agreement State Licensees should use their two letter State abbreviation followed by a dash and the Licensee's license number (e.g., CA-123456).

- 28. When making a payment to the NRC through Pay.gov for processing of fingerprints, Pay.gov requires a TCN. What is a TCN and what information should go in this field?**

TCN stands for "Transaction Control Number" and it identifies payment for the processing of fingerprints for any given individual. The TCN is a tool for Licensees to track their submissions and may include any number of identifying information that would be useful for that purpose. For instance, Licensees can include the names of one or more individuals for whom payment is being made, Licensee's name and/or date of submittal.

- 29. Can I submit my fingerprints electronically to the NRC?**

Yes. Some Licensees may choose to make arrangement with the NRC to submit fingerprints electronically to the NRC. However, for many Licensees this option may be prohibitive, due to the cost associated with the purchase of electronic fingerprinting equipment. To establish an electronic fingerprinting program with the NRC, please contact NRC's Facility Security Branch at 301-492-3531. Please note that electronic submission of fingerprints to the NRC must come directly from the Licensee.

- 30. What happens to the fingerprint cards after the NRC receives it from the Licensee?**

The NRC scans the fingerprint cards to transmit to the FBI electronically. The cards are retained and secured for approximately a month after which time they are destroyed in accordance with Federal guidelines.

**31. How should large companies that are licensed in multiple jurisdictions respond to the fingerprinting requirements?**

The fingerprinting requirements are imposed based on the license, not the company. If a company holds multiple licenses subject to the fingerprinting requirements, it must respond for each license. For example, if a company holds two NRC licenses, it must respond for both licenses. If convenient, the company may submit a combined response covering both licenses, but the response must address each of the licenses (i.e., “Joe Smith, RSO for both of our licenses, will serve as the Reviewing Official for both licenses XX-XXXXX-01 and XX-XXXXX-02.”).

**32. The implementation deadline has passed and I have not completed the trustworthiness and reliability adjudication process for certain individuals because I have not received classifiable fingerprint/FBI criminal history check results. Should I submit a request for relief from the implementation deadline?**

A request for relief from the implementation deadline is not necessary if the initial fingerprint submissions for individuals requiring unescorted access to radioactive materials in quantities of concern were submitted to the (NRC) by the implementation deadline. For these individuals, the trustworthiness and reliability adjudication process should be completed within a maximum of 35 days from the date of receipt of

classifiable fingerprints and criminal history reports.

**33. What are the next steps in the process if the FBI rejects a Form FD-258 (fingerprint card) because the fingerprints are not classifiable? What options are available to licensees if an individual's fingerprints cannot be classified based on conditions other than poor quality after multiple attempts?**

The overwhelming majority of fingerprint cards are returned as classifiable (i.e., can be read by the FBI and used to identify the individual). If the initial fingerprint submission is returned by the FBI because the fingerprint impressions cannot be classified, the fingerprints may be retaken and resubmitted (i.e., new Form-258 or submission) for a second attempt. The licensee will not be charged for the resubmission if the licensee provides a copy of the FBI response indicating the fingerprints could not be classified.

If the FBI is unable to classify the second submission of fingerprints, the licensee can submit additional fingerprint impressions for the individual, as follows:

1. The third fingerprint card submission will require payment of an additional \$26 processing fee.
2. If the third submission is also returned as unclassifiable, the licensee may submit a fourth set of fingerprints. An additional fee is not required because the fee for the third submission includes one resubmission. As with the second submission, the FBI response should be included, or the submission may be treated as a new request and an additional fee may be charged.

Please note that a licensee can opt to take and submit the third and fourth sets of fingerprints together to avoid a potential delay in the response. If the third set is returned as unclassifiable, NRC will automatically resubmit the fourth set.

3. If the fourth submission is returned as unclassifiable, the licensee should submit six (6) additional fingerprint cards for the individual. All six cards will be forwarded to the FBI, who will take what they believe to be the best quality prints from each card to make a complete set of fingerprints. An additional \$26 processing fee is required and covers the processing of all six fingerprint cards, but does not include an additional resubmission.
4. If the FBI is unable to obtain classifiable fingerprints from the six cards, **based on conditions other than poor quality** (e.g., medical conditions or physical anomalies that prevent the taking of readable prints), then the NRC will automatically request a check based on a name search for the individual, and will forward the results to the licensee.
5. No further submissions will be required, and the licensee can consider the results of the name search-FBI identification and criminal history records check as a component in determining trustworthiness and reliability in accordance with the Order.

The NRC will consider licensee requests for deviation from the above process for good cause (e.g., a demonstrated history of difficulty providing classifiable fingerprints during other fingerprinting programs or a documented medical condition or physical



anomaly that can prevent the taking of readable prints). Licensees may submit a request for consideration of alternatives, and provide the basis for the need for an alternative process to NRC's Facilities Security Branch in the Division of Facilities and Security (requests may be made by phone at 301-492-3531, mailed to the mailing address in Enclosure 3 to the Order, by FAX to the attention of Doreen Turner at 301-492-3448 with a cover sheet attached, or e-mailed to [Doreen.turner@nrc.gov](mailto:Doreen.turner@nrc.gov)). Please note that requests for an alternative to the above process will not affect a licensee's responsibility to fingerprint individuals for unescorted access or to comply with the trustworthiness and reliability requirements of the Order.

Licensees should be aware that Steps 3 and 4 do not occur often, and should take notice that Step 4 may only occur in instances where the FBI has determined that the fingerprints cannot be classified based on conditions other than poor quality. Failure to provide quality fingerprint impressions may result in the individual not able to be considered for unescorted access.

Fingerprints may be unclassifiable for a number of reasons, including:

1. Incomplete impressions (fingers not completely rolled from one side of the nail to the other).
2. Left and right hands reversed on the fingerprint card.
3. The same hand or finger printed twice on the card.
4. Fingerprints are not clear and distinct (smudged, uneven, too dark or light, etc.).
5. Fingers on the card are missing or partially missing without an explanation.

To avoid rejection of fingerprints by the FBI as "unclassifiable," the person taking the

prints should ensure they are of good quality and do not include any of these deficiencies, and follow the instructions on the back of the fingerprint card. Also, fingerprint cards with incomplete or missing information will be returned to the licensee to provide complete information, resulting in a delay in processing.

The FBI has provided guidance on the taking of fingerprints for submission to the FBI at <http://www.fbi.gov/hq/cjisd/takingfps.html>. This guidance also discusses special situations, such as fingerprinting an individual with abnormalities of the fingers, thumbs or hands, and the appropriate way to identify such situations on the fingerprint card. A checklist to verify that the fingerprint impressions meet the FBI's requirements is also included.

**34. Will guidance be provided on what determines trustworthiness and reliability?**

No, however, IC1(b) provides the minimum basis upon which a determination may be made. Alternative sources may be used depending on the information available to the licensee. It is the licensee's responsibility to make a trustworthiness and reliability determination for an employee granted unescorted access. This is a licensee's business decision as to what criteria it uses for the bases of the trustworthiness and reliability determination.

The trustworthy and reliability determination is designed to identify past actions to help verify one's character and reputation which provide reasonable assurance of an individual's future reliability.

The following are some indicators that licensees may want to consider for what may be

a trustworthiness and reliability concern:

1. Impaired performance attributable to psychological or other disorders.
2. Conduct that warrants referral for criminal investigation or results in arrest or conviction.
3. Indication of deceitful or delinquent behavior.
4. Attempted or threatened destruction of property or life.
5. Suicidal tendencies or attempted suicide.
6. Illegal drug use or the abuse of legal drugs.
7. Alcohol abuse disorders.
8. Recurring financial irresponsibility.
9. Irresponsibility performing assigned duties.
10. Inability to deal with stress, or having the appearance of being under unusual stress.
11. Failure to comply with work directives.
12. Hostility or aggression toward fellow workers or authority.
13. Uncontrolled anger, violation of safety or security procedures, or repeated absenteeism.
14. Significant behavioral changes, moodiness or depression.

These indicators are not meant to be all inclusive or intended to be disqualifying factors. Licensees can also consider extenuating or mitigating factors in their determinations.

## **Procedures for Processing Fingerprint Checks**

For the purpose of complying with this Order, Licensees should:

1. Submit one completed, legible standard fingerprint card (Form FD-258, ORIMDNRCOOOZ) for each individual seeking unescorted access to certain radioactive material to the Director, Division of Facilities and Security.
2. **Include a cover letter with the name and address of the NRC-approved Reviewing Official to whom the criminal history records should be returned.**
3. Mail applications to the following address (overnight mail is preferred):  
  
Director, Division of Facilities and Security  
  
U.S. Nuclear Regulatory Commission  
  
11545 Rockville Pike  
  
Rockville, MD 20852-2738  
  
ATTN: CRIMINAL HISTORY PROGRAM, MAIL STOP TWB- 05B32M
4. Fingerprints for unescorted access need not be taken if an employed individual (e.g., a Licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.61, or any person who has been favorably-decided by a U.S. Government program involving fingerprinting and an FBI identification and criminal history records check (e.g., National Agency Check, Transportation Worker Identification Credentials in accordance with 49 CFR Part 1572, Bureau of Alcohol Tobacco Firearms and Explosives background checks and clearances in accordance with 27 CFR Part 555, Health and Human Services security risk assessments for possession and use of select agents and toxins in accordance with 42 CFR Part 73, Hazardous Material security threat assessment for hazardous material endorsement to

commercial drivers license in accordance with 49 CFR Part 1572, Customs and Border Patrol's Free and Secure Trade Program<sup>8</sup>) within the last five (5) years, or any person who has an active Federal security clearance (provided in the latter two cases that they make available the appropriate documentation<sup>9</sup>). Written confirmation from the Agency/employer which granted the federal security clearance or reviewed the FBI criminal history records results based upon a fingerprint identification check must be provided. The Licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires unescorted access to certain radioactive material associated with the Licensee's activities.

Additional copies of Form FD-258 may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, by calling (301) 492-3531, or by e-mail to [forms@nrc.gov](mailto:forms@nrc.gov). The Licensee should establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.

Licensees must have their fingerprints taken by an official authorized to take fingerprints, such as a representative from a local law enforcement agency or a private entity qualified to take fingerprints, because the official must certify the identity of the person being fingerprinted.

The NRC will review submitted fingerprint cards for completeness. Any Form FD-258 fingerprint record containing omissions or evident errors will be returned to the Licensee for corrections.

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<sup>8</sup> The FAST program is a cooperative effort between the Bureau of Customs and Border Patrol and the governments of Canada and Mexico to coordinate processes for the clearance of commercial shipments at the U.S. - Canada and U.S. - Mexico borders. Participants in the FAST program, which requires successful completion of a background records check, may receive expedited entrance privileges at the northern and southern borders.

<sup>9</sup> This documentation must allow the Reviewing Official to verify that the individual has fulfilled the unescorted access requirements of Section 149 of the AEA by submitting to fingerprinting and an FBI identification and criminal history records check.

The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified (e.g., due to poor quality, incomplete impressions, or other errors in the taking of the fingerprints). The licensee will not be charged for the one re-submission if the licensee provides the FBI Transaction Control Number (TCN) or a copy of the FBI response indicating the fingerprints could not be classified. If additional re-submissions are necessary, they will be treated as initial submittals and will require an additional payment of the processing fee.

Fees for processing fingerprint checks are due upon application (Note: local law enforcement agencies or contractors taking the fingerprints may charge an additional fee for this service). Licensees should submit payments electronically via <http://www.pay.gov>. Payments through Pay.gov can be made directly from the Licensee's credit/debit card. Licensees will need to establish a password and user ID before they can access Pay.gov. To establish an account, Licensees should send a request for an account to [paygo@nrc.gov](mailto:paygo@nrc.gov). The request must include the Licensee's name, address, point of contact, e-mail address, and contact phone number. The NRC will forward each request to Pay.gov and Pay.gov will contact the Licensee with all of the necessary account information. Licensees without a credit or debit card that can be linked to Pay.gov can pay the fees by check, cashier check or money order made out to the NRC and submitted with the fingerprint cards.

The payment of the fees for processing fingerprints must be made before or with the submission of applications to the NRC. Combined payment for multiple applications is acceptable. Licensees should include the Pay.gov payment receipt(s), or a check, cashier check, or money order for the fee(s) along with the application(s). For additional guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 492-3531. The application fee (currently \$26) is the sum of the user fee charged by the FBI for

each fingerprint card or other fingerprint record submitted by the NRC on behalf of a Licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of Licensee fingerprint applications. The Commission will directly notify Licensees subject to this requirement of any fee changes.

It is necessary for a Licensee to resubmit fingerprints only under two conditions:

1. The FBI has determined that the fingerprints cannot be classified due to poor quality in the mechanics of taking the initial impressions.
2. The initial submission has been lost.

If the FBI advises the fingerprints are unclassifiable based on conditions other than poor quality, the Licensee may submit a request to NRC for alternatives. The Commission will receive and forward to the submitting Licensee all data from the FBI as a result of the Licensee's application(s) for criminal history records checks, including the FBI fingerprint record(s). When the results are received from the FBI, no further fingerprint-related search is necessary.

## **Guidance for Evaluating FBI Identification and Criminal History Records Checks for Allowing Unescorted Access to Certain Radioactive Material**

Each Licensee is responsible for determining whether to grant an individual unescorted access to certain radioactive materials. The Licensee shall allow only trustworthy and reliable individuals, approved in writing by the Licensee, to have unescorted access to radioactive material quantities of concern (listed in Attachment 2 of the Order) and devices containing that radioactive material. The trustworthiness and reliability determination, to grant an individual unescorted access to certain radioactive materials, is made by the Licensee's Reviewing Official, based on information gathered from all four elements of the background check and evaluated by the Reviewing Official. The minimum four background check elements are: 1) fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check, 2) verifying employment history, 3) verifying education, and 4) personal references. The purpose of this guidance is to address the fingerprinting component of the determination.

Unescorted access determinations require an evaluation of a person's trustworthiness and reliability. When a person's life history shows evidence of unreliability or untrustworthiness, questions arise whether the person can be relied on and trusted to exercise the responsibility necessary for working with risk-significant radioactive materials. The purpose of the trustworthiness and reliability determination requirement, for unescorted access, is to provide reasonable assurance that those individuals are trustworthy and reliable, and do not constitute an unreasonable risk to the public health and safety, including the potential to commit or aid theft and/or radiological sabotage. This is a Licensee's business decision as to what criteria it



uses for the bases of the trustworthiness and reliability determination. Some indicators that Licensees should consider for what may be a trustworthiness and reliability concern can be found in Increased Control guidance in Q and A #34 (Enclosure 2 to the transmittal letter of this Order).

In evaluating the relevance of an individual's conduct, the Reviewing Official should consider the following factors:

- (1) The nature, extent, and seriousness of the conduct;
- (2) The circumstances surrounding the conduct, to include knowledgeable participation;
- (3) The frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) The extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) The motivation for the conduct;
- (8) The potential for pressure, coercion, exploitation, or duress; and
- (9) The likelihood of continuation or recurrence.

Each case must be judged on its own merits, and final determination remains the responsibility of the Licensee. In every case, the Reviewing Official should evaluate trustworthiness and reliability based on an accumulation of information which supports a positive finding, prior to granting unescorted access. Items to consider include:

1. The Reviewing Official should evaluate the information collected for consistency and adequacy.
2. True identity should be evaluated by comparing applicant provided identification and personal history data to pertinent information from the background check, and other data sources.
3. The Reviewing Official should determine whether inconsistencies determined through review or investigation, are intentional, innocent, or an oversight. Willful or intentional acts of omission or untruthfulness could be grounds for denial of unescorted access.

When a Licensee submits fingerprints to the NRC pursuant to an NRC Order, it will receive a FBI identification and criminal history record since the individual's eighteenth birthday. The Licensee will receive the information from the criminal history check of those individuals requiring unescorted access to radioactive materials, and the Licensee's Reviewing Official should evaluate that information using the guidance below.

The Licensee's Reviewing Official is required to evaluate all available information in making a T&R determination for unescorted access to radioactive materials, including the criminal history records information pertaining to the individual as required by the NRC Order. The FBI identification and criminal history records check is used in the determination of whether the individual has a record of criminal activity that indicates that the individual should not have

unescorted access to radioactive materials subject to this Order. Each determination of trustworthiness and reliability for unescorted access to radioactive materials, which includes a review of criminal history information, must be documented to include the basis for the decision made.

Licensees shall not make a final determination solely on the basis of criminal history checks information involving an arrest more than 1 year old for which there is not information on the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

All information collected is to be considered by the Licensee in making a trustworthiness or reliability determination for unescorted access. Potentially disqualifying information obtained from confidential/unnamed sources must be substantiated and documented, and should not be used as a sole basis to deny access authorization unless corroborated. Licensees should establish criteria in writing that would disqualify someone from being granted authorized access.

The FBI identification and criminal history records check is used to evaluate whether the individual has a record of criminal activity that may compromise his or her trustworthiness and reliability. Identification of a criminal history through the FBI criminal history records check does not automatically indicate unreliability or lack of trustworthiness of the employee. The licensee will have to judge the nature of the criminal activity, length of employment, and recency of the criminal activity. The licensee can authorize individuals with criminal records for unescorted access to radioactive materials, based on a documented evaluation of the basis for determining that the employee was reliable and trustworthy notwithstanding his or her criminal history. Each evaluation conducted in review of criminal history and other background checks information, should be documented to include the decision making basis.

At a minimum, the Licensee should consider the following elements when evaluating the results of the FBI Identification and Criminal History Records check:

1. Committed, attempted to commit, aided, or abetted another who committed or attempted to commit any act of sabotage, espionage, treason, sedition, or terrorism.
2. Publicly or privately advocated actions that may be inimical to the interest of the United States, or publicly or privately advocated the use of force or violence to overthrow the Government of the United States or the alteration of the form of government of the United States by unconstitutional means.
3. Knowingly established or continued a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, terrorist, or revolutionist, or with an espionage agent or other secret agent or representative of a foreign nation whose interests may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the Government of the United States or the alteration of the form of government of the United States by unconstitutional means. (Ordinarily, the Licensee should not consider chance or casual meetings or contacts limited to normal business or Official relations.)
4. Joined or engaged in any activity knowingly in sympathy with or in support of any foreign or domestic organization, association, movement, group, or combination of persons which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or any State or any subdivisions thereof by unlawful means, or which advocate the use of force and violence to overthrow the Government of the United States or the alteration of the form of government of the United States by unconstitutional means. (Ordinarily, the Licensee should not consider

chance or casual meetings or contacts limited to normal business or official relations.)

5. Deliberately misrepresented, falsified or omitted relevant and material facts from documentation provided to the Licensee.
6. Has been convicted of a crime(s) which, in the Reviewing Official's opinion, indicate poor judgment, unreliability, or untrustworthiness.

These indicators are not meant to be all inclusive nor intended to be disqualifying factors. Licensees can also consider how recent such indicators occurred and other extenuating or mitigating factors in their determinations. Section 149.c.(2)(B) of the AEA requires that the information obtained as a result of fingerprinting be used solely for the purposes of making a determination as to unescorted access suitability. Unescorted access suitability is not a hiring decision, and the NRC does not intend for licensees to use this guidance as such. Because a particular individual may not be suitable for unescorted access does not necessarily mean that he is not suitable for escorted access or some other position that does not involve NRC-regulated activities.

## **Process to Challenge NRC Denials or Revocations of Unescorted Access to Certain Radioactive Material**

### **1. Policy.**

This policy establishes a process for individuals whom NRC licensees nominate as Reviewing Officials to challenge and appeal NRC denials or revocations of access to certain radioactive material. Any individual designated as a licensee Reviewing Official whom the NRC has determined may not have unescorted access to certain radioactive material shall, to the extent provided below, be afforded an opportunity to challenge and appeal the NRC's determination. This policy shall not be construed to create a liberty or property interest of any kind in the unescorted access of any individual to certain radioactive material.

### **2. Applicability.**

This policy applies solely to those employees of licensees who are designated as a Reviewing Official, and who are thus to be considered by the NRC for initial or continued unescorted access to certain radioactive material in that position.

### **3. Unescorted Access Determination Criteria.**

Determinations for granting a designated Reviewing Official unescorted access to certain radioactive material will be made by the NRC staff. Unescorted access shall be denied or revoked whenever it is determined that an individual does not meet the applicable standards. Any doubt about an individual's eligibility for initial or continued unescorted access to certain

radioactive material shall be resolved in favor of national security and result in denial or revocation of unescorted access.

#### 4. Procedures to Challenge the Contents of Records Obtained from the FBI.

Prior to a determination by the NRC Facilities Security Branch Chief that an individual designated as a Reviewing Official is denied or revoked unescorted access to certain radioactive material, the individual shall:

- a. Be provided the contents of records obtained from the FBI for the purpose of assuring correct and complete information. If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537-9700 (as set forth in 28 C.F.R. § 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency.
- b. Be afforded 10 days to initiate an action challenging the results of an FBI criminal history records check (described in (a), above) after the record is made available for

the individual's review. If such a challenge is initiated, the NRC Facilities Security Branch Chief may make a determination based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record.

5. Procedures to Provide Additional Information.

Prior to a determination by the NRC Facilities Security Branch Chief that an individual designated as a Reviewing Official is denied or revoked access to certain radioactive material, the individual shall be afforded an opportunity to submit information relevant to the individual's trustworthiness and reliability. The NRC Facilities Security Branch Chief shall, in writing, notify the individual of this opportunity, and any deadlines for submitting this information. The NRC Facilities Security Branch Chief may make a determination of unescorted access to certain radioactive material only upon receipt of the additional information submitted by the individual, or, if no such information is submitted, when the deadline to submit such information has passed.

6. Procedures to Notify an Individual of the NRC Facilities Security Branch Chief Determination to Deny or Revoke Access to Certain Radioactive Material.

Upon a determination by the NRC Facilities Security Branch Chief that an individual nominated as a Reviewing Official is denied or revoked access to certain radioactive material, the individual shall be provided a written explanation of the basis for this determination.

7. Procedures to Appeal an NRC Determination to Deny or Revoke Access to Certain Radioactive Material.



Upon a determination by the NRC Facilities Security Branch Chief that an individual nominated as a reviewing official is denied or revoked access to certain radioactive material, the individual shall be afforded an opportunity to appeal this determination to the Director, Division of Facilities and Security. The determination must be appealed within 20 days of receipt of the written notice of the determination by the Facilities Security Branch Chief, and may either be in writing or in person. Any appeal made in person shall take place at the NRC's headquarters, and shall be at the individual's own expense. The determination by the Director, Division of Facilities and Security, shall be rendered within 60 days after receipt of the appeal.

8. Procedures to Notify an Individual of the Determination by the Director, Division of Facilities and Security, Upon an Appeal.

A determination by the Director, Division of Facilities and Security, shall be provided to the individual in writing and include an explanation of the basis for this determination. A determination by the Director, Division of Facilities and Security, to affirm the Facilities Branch Chief's determination to deny or revoke an individual's access to certain radioactive material is final and not subject to further administrative appeals.

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